

The Honorable Ricardo S. Martinez

11-CR-00057-PLAGR

FILED ENTERED
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JUL 27 2011

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID RUSSELL MYRLAND,

Defendant.

No. CR11-057RSM

PLEA AGREEMENT

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Vincent T. Lombardi and Jill Otake, Assistant United States Attorneys for said District, Defendant, DAVID RUSSELL MYRLAND, and his attorney, Stephan Illa, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B):

1. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters his plea of guilty to the following charge contained in the Indictment: *Transmission of Threatening Interstate Communication*, as charged in Count 1, in violation of Title 18, United States Code, Section 875(c).

By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that before entering his plea of guilty, he will be placed under oath. Any statement given by Defendant under oath may be used by the United States in a prosecution for perjury or false statement.

1 **2. Elements of the Offense.** The elements of the offense of *Transmission of*
 2 *Threatening Interstate Communication*, as charged in Count 1, in violation of Title 18, United
 3 States Code, Section 875(c), are as follows:

4 *First*, Defendant sent a message containing a threat to kidnap or injure the person of
 5 another;

6 *Second*, Defendant sent the message in interstate or foreign commerce; and

7 *Third*, Defendant intended his words to be taken as a true threat.

8 **3. The Penalties.** Defendant understands that the statutory penalties for the offense
 9 of *Transmission of Threatening Interstate Communication*, as charged in Count 1, in violation of
 10 Title 18, United States Code, Section 875(c), are as follows: Imprisonment for up to five (5)
 11 years; a fine of up to \$250,000; a period of supervision following release from prison of between
 12 two (2) years, and three (3) years; and a special assessment of \$100.

13 Defendant agrees that the special assessment shall be paid at or before the time of
 14 sentencing.

15 Defendant understands that supervised release is a period of time following imprisonment
 16 during which he will be subject to certain restrictions and requirements. Defendant further
 17 understands that if supervised release is imposed and he violates one or more of its conditions,
 18 Defendant could be returned to prison for all or part of the term of supervised release that was
 19 originally imposed. This could result in Defendant's serving a total term of imprisonment greater
 20 than the statutory maximum stated above.

21 Defendant understands that in addition to any term of imprisonment and/or fine that is
 22 imposed, the Court may order him to pay restitution to any victim of the offense, as required by
 23 law. Defendant further understands that a consequence of pleading guilty may include the
 24 forfeiture of certain property either as a part of the sentence imposed by the Court, or as a result
 25 of civil judicial or administrative process.

26 Defendant agrees that any monetary penalty the Court imposes, including the special
 27 assessment, fine, costs, or restitution, is due and payable immediately and further agrees to
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1 submit a completed Financial Statement of Debtor form as requested by the United States
2 Attorney's Office.

3 **4. Rights Waived by Pleading Guilty.** Defendant understands that by pleading
4 guilty, he knowingly and voluntarily waives the following rights:

- 5 a. The right to plead not guilty and to persist in a plea of not guilty;
- 6 b. The right to a speedy and public trial before a jury of his peers;
- 7 c. The right to the effective assistance of counsel at trial, including, if
8 Defendant could not afford an attorney, the right to have the Court appoint one for him;
- 9 d. The right to be presumed innocent until guilt has been established beyond a
10 reasonable doubt at trial;
- 11 e. The right to confront and cross-examine witnesses against Defendant at
12 trial;
- 13 f. The right to compel or subpoena witnesses to appear on his behalf at trial;
- 14 g. The right to testify or to remain silent at trial, at which trial such silence
15 could not be used against Defendant; and
- 16 h. The right to appeal a finding of guilt or any pretrial rulings.

17 **5. United States Sentencing Guidelines.** Defendant understands and acknowledges
18 that, at sentencing, the Court must consider the sentencing range calculated under the
19 United States Sentencing Guidelines, together with the other factors set forth in Title 18,
20 United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense;
21 (2) the history and characteristics of the defendant; (3) the need for the sentence to reflect the
22 seriousness of the offense, to promote respect for the law, and to provide just punishment for the
23 offense; (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the
24 need for the sentence to protect the public from further crimes of the defendant; (6) the need to
25 provide the defendant with educational and vocational training, medical care, or other
26 correctional treatment in the most effective manner; (7) the kinds of sentences available; (8) the
27 need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity
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1 among defendants involved in similar conduct who have similar records. Accordingly,
 2 Defendant understands and acknowledges that:

3 a. The Court will determine his applicable Sentencing Guidelines range at the
 4 time of sentencing;

5 b. After consideration of the Sentencing Guidelines and the factors in
 6 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum
 7 term authorized by law;

8 c. The Court is not bound by any recommendation regarding the sentence to
 9 be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by
 10 the parties or the United States Probation Department, or by any stipulations or agreements
 11 between the parties in this Plea Agreement; and

12 d. Defendant may not withdraw a guilty plea solely because of the sentence
 13 imposed by the Court.

14 **6. Ultimate Sentence.** Defendant acknowledges that no one has promised or
 15 guaranteed what sentence the Court will impose.

16 **7. Restitution.** Defendant shall make restitution to the City of Kirkland and victims
 17 O.R. and J.M.. in an amount to be determined by the Court at the time of sentencing, with credit
 18 for any amounts already paid. Said amount shall be due and payable immediately and shall be
 19 paid in accordance with a schedule of payments as proposed by the United States Probation
 20 Office and ordered by the Court.

21 **8. Forfeiture.** Defendant also agrees that if any firearms or illegal contraband were
 22 seized by any law enforcement agency from the possession of Defendant, or that were in the
 23 direct or indirect control of Defendant, then Defendant consents to the administrative forfeiture,
 24 official use, and/or destruction of said firearms or contraband by any law enforcement agency
 25 involved in the seizure of these items. Said items include, but are not limited to, one Springfield
 26 XD semiautomatic handgun and associated magazines and ammunition.

27 **9. Statement of Facts.** The parties agree on the following facts. Defendant admits
 28 he is guilty of the charged offense.

a. Defendant DAVID RUSSELL MYRLAND admits that on or about August 30, 2010, he sent an email to "J.M.," the Mayor of the City of Kirkland, Washington, containing a threat to kidnap and injure J.M. Specifically, Defendant admits that he threatened to cause others to enter J.M.'s home to "arrest" her by law for offenses Defendant felt had been committed against him by police officers working for the City of Kirkland. Defendant further admits that he advised J.M. not to resist, as the people he was working with would be heavily armed and authorized to use force by law.

b. Defendant admits that said email was sent using Microsoft Corporation's Hotmail service, and that the email was routed through a server in San Antonio, Texas.

c. Defendant further admits that he intended the email to be interpreted as a true threat by the recipient, J.M.

d. Defendant further admits that he had participated in conversations and meetings with other individuals about carrying out said threat; and that the threat, and similar threats were repeated in subsequent written and oral communications with individuals at the City of Kirkland.

10. Sentencing Recommendation. The United States agrees it will recommend that the Court impose a custodial sentence of no more than forty-eight (48) months. The United States is free to make any other sentencing recommendations it sees fit, including but not limited to the term and conditions of supervised release and restitution.

Defendant is free to make any sentencing recommendations he sees fit.

As set forth in paragraph 5, above, Defendant understands that the Court is not obligated to accept either parties recommendations, and may impose any sentence authorized by law, up to the maximum term authorized by law.

11. Non-Prosecution of Additional Offenses. As part of this Plea Agreement, the United States Attorney's Office for the Western District of Washington agrees not to prosecute Defendant for any additional offenses known to it as of the time of this Agreement that are based upon evidence in its possession at this time, and that arise out of the conduct giving rise to this investigation. In this regard, Defendant recognizes the United States has agreed not to prosecute

all of the criminal charges the evidence establishes were committed by Defendant solely because of the promises made by Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing the Presentence Report, the United States Attorney's Office will provide the United States Probation Office with evidence of all conduct committed by Defendant.

12. Acceptance of Responsibility. The United States acknowledges that if Defendant qualifies for an acceptance of responsibility adjustment pursuant to USSG § 3E1.1(a), and if the offense level is sixteen (16) or greater, his total offense level should be decreased by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because has assisted the United States by timely notifying the authorities of Defendant's intention to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

13. Breach, Waiver, and Post-Plea Conduct. Defendant agrees that if Defendant breaches this Plea Agreement, the United States may withdraw from this Plea Agreement and Defendant may be prosecuted for all offenses for which the United States has evidence. Defendant agrees not to oppose any steps taken by the United States to nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement, Defendant has waived any objection to the re-institution of any charges in the Indictment that were previously dismissed or any additional charges that had not been prosecuted.

Defendant further understands that if, after the date of this Agreement, Defendant should engage in illegal conduct, or conduct that is in violation of his conditions of confinement (examples of which include, but are not limited to: obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the Pretrial Services Officer, Probation Officer, or Court), the United States is free under this Agreement to file additional charges against Defendant or to seek a sentence that takes such conduct into consideration by requesting the Court to apply additional adjustments or enhancements in its Sentencing Guidelines calculations in order to increase the applicable advisory Guidelines range, and/or by seeking an upward departure or variance from the calculated advisory Guidelines range. Under these circumstances, the United States is free to

1 seek such adjustments, enhancements, departures, and/or variances even if otherwise precluded
2 by the terms of the plea agreement.

3 **14. Waiver of Appeal.** As part of this Plea Agreement and on the condition that the
4 Court imposes a custodial sentence that is within or below the Sentencing Guidelines range (or
5 the statutory mandatory minimum, if greater than the Guidelines range) that is determined by the
6 Court at the time of sentencing, Defendant waives to the full extent of the law:

- 7 a. any right conferred by Title 18, United States Code, Section 3742 to appeal the
8 sentence, including any restitution order imposed; and
- 9 b. any right to bring a collateral attack against the conviction and sentence, including
10 any restitution order imposed, except as it may relate to the effectiveness of legal
11 representation.

12 Furthermore, this waiver does not preclude Defendant from bringing an appropriate motion
13 pursuant to 28 U.S.C. 2241, to address the conditions of his confinement or the decisions of the
14 Bureau of Prisons regarding the execution of his sentence.

15 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
16 attacking (except as to effectiveness of legal representation) the conviction or sentence in any
17 way, the United States may prosecute Defendant for any counts, including those with mandatory
18 minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.

19 **15. Voluntariness of Plea.** Defendant agrees that Defendant has entered into this Plea
20 Agreement freely and voluntarily and that no threats or promises, other than the promises
21 contained in this Plea Agreement, were made to induce Defendant to enter this plea of guilty.

22 **16. Statute of Limitations.** In the event this Agreement is not accepted by the Court
23 for any reason, or Defendant has breached any of the terms of this Plea Agreement, the statute of
24 limitations shall be deemed to have been tolled from the date of the Plea Agreement to:
25 (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or
26 (2) thirty (30) days following the date on which a breach of the Plea Agreement by Defendant is
27 discovered by the United States Attorney's Office.

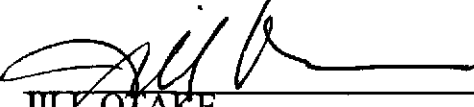
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1 **17. Completeness of Agreement.** The United States and Defendant acknowledge that
2 these terms constitute the entire Plea Agreement between the parties. This Agreement binds
3 only the United States Attorney's Office for the Western District of Washington. It does not
4 bind any other United States Attorney's Office or any other office or agency of the
5 United States, or any state or local prosecutor.

6 Dated this 27th day of July, 2011.

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9 DAVID RUSSELL MYRLAND
Defendant

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12 STEPHAN ILLA
Attorney for Defendant

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JILL OAKE
Assistant United States Attorney

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VINCENT T. LOMBARDI
Assistant United States Attorney
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